

REMARKS

Reconsideration of the application in light of the following remarks is respectfully requested.

Status of the Claims

Claims 13-15, 18-23 and 29-31 are pending. Claims 1-12, 16-17, 24-28 and 32 were canceled by previous amendment, without prejudice or disclaimer of the subject matter recited therein.

Rejections under 35 U.S.C. §103

Claims 13-15, 18-23 and 29-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,847,613 to Mimura et al. ("Mimura") in view of the Examiner's statement of what was known in the art at the time of the invention. Applicants respectfully traverse the rejection.

Mimura describes implementing monitoring of communication flows and collecting statistical data of a packet switched network. Mimura describes a meter 5 that observes incoming packets, and acquires/ retains statistical data on predetermined items for those incoming packets which meet conditions identified by a flow identifying unit 3. Packets not meeting the conditions are forwarded to their destination, but do not undergo monitoring and statistic collection. Mimura, column 6, lines 36-45, 59-65; Fig. 1. Under instruction by a MUX control 6, the statistical data is incorporated into the communication flow consisting of the packets to be delivered and sent as part of the flow. Mimura, column 7, lines 32-35.

Mimura describes that usage bandwidth 78 information regarding packet switch transmit bandwidth and timestamps 79 that can be acquired for each communication flow can be sent to a user. Mimura, column 14, lines 52-56.

The Office Action states that Mimura describes

that each set of bandwidth usage characteristics values (e.g., 78, Fig. 7) is also associated with three timestamps indicating the start, end and duration of time the measured raw packets are engaged. It is clear that the timestamp marking the end of each measured packet in a respective interval accurately describes a time of combining the characteristic values for the associated packets.

Detailed Action, page 6.

Independent method claim 13 of the present application is directed to the aggregation of characteristic values of measurement delay and includes the step of “combining the measured data into characteristic values having a lower volume than the measured data” and “associating the characteristic values with a time of the combining.” Independent system claim 29 is directed to a measurement system that includes a measuring computer configured to perform the steps of method claim 13. It is respectfully submitted that Mimura fails to disclose or suggest associating characteristic values with a time of their combining, as recited in independent claims 13 and 29. In contrast to the Office Action’s statement that Mimura clearly describes that the timestamp 79 “accurately describes a time of combining the characteristic values for the associated packets,” Mimura merely describes that the packet switch’s transmit usage bandwidth 78 and timestamps 79 that can be acquired for each communication flow can be sent to a user. Mimura, column 14, lines 52-56. The Examiner’s statement of what was known in the art at the time of the invention

fails to disclose, or suggest, these features of independent claims 13 and 29 missing from Mimura. Therefore, a combination of Mimura and the Examiner's statement, to the extent proper, could not render independent claims 13 and 29, nor their respective dependent claims, obvious.

Reconsideration and withdrawal of the rejection of claims 13-15, 18-23 and 29-31 under 35 U.S.C. § 103(a) as being unpatentable based on a combination of Mimura and the Examiner's statement is respectfully requested.

Statements of Well-Known Fact

Applicants respectfully submit that the present Office Action relies on assertions not supported by any concrete evidence in the record to formulate the rejection. As acknowledged in the present Office Action, Mimura, the only evidence of record, fails to describe all the claimed features of independent claims 13 and 29. Applicants respectfully traverse all contentions of well-known fact to the extent that they are maintained and respectfully request that the Examiner provide specific evidence to establish those assertions and/or contentions under 37 C.F.R. § 1.104(d)(2) or otherwise.

In response to this same request in the prior response, the Examiner now states that

[t]he Examiner does not rely on Mimura or any other evidence in the record to teach that one-way delay measurements can be used to characterize a communication path because it is a well known fact.

Detailed Action, page 6, item 15. As requested in the previous response, once again Applicants respectfully request that the Examiner provide an affidavit and/or that the Examiner

provide published information concerning the assertions made in the Office Action regarding well-known facts. See, Detailed Action, item 5, last two paragraphs, pages 3-4. This is because the rejections of the claims are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. See M.P.E.P. § 2144.03(A). Indeed, the Examiner freely admits that no reliance is given to “Mimura or any other evidence in the record,” Detailed Action, page 6, item 15, for at least one of these unsupported facts.

Because the Examiner has not provided the requisite support requested in the previous response, Applicants submit that the finality of the present Office Action is improper and the finality should be withdrawn.

CONCLUSION

In view of the foregoing it is believed that remaining claims 13-15, 18-23 and 29-31 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

The Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this submission, including any additional filing or application processing fees required under 37 C.F.R. §1.16 or 1.17, or to credit any overpayment, to Deposit Account No. 04-0100.

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Respectfully submitted,

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